

REMARKS

Claims 30, 31, 33-38 and 44-49 are pending in the application. Claims 30 and 31 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cragg (2001/49527). Claims 44 and 45 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cragg '527 in view of Froning (3875595). Claims 33-38 and 46-49 have been indicated to be allowable if rewritten to include all the limitations of the base claim and any intervening claims. Favorable reconsideration of the application is respectfully requested.

As indicated by the claims above, the present invention provides a method of augmenting or replacing an intervertebral disc nucleus by providing a whole disc annulus that is substantially free of both disc nucleus material and disc endplate material, and implanting that whole disc annulus in an intervertebral disc nucleus space. That claimed method is neither taught nor suggested by the cited prior art.

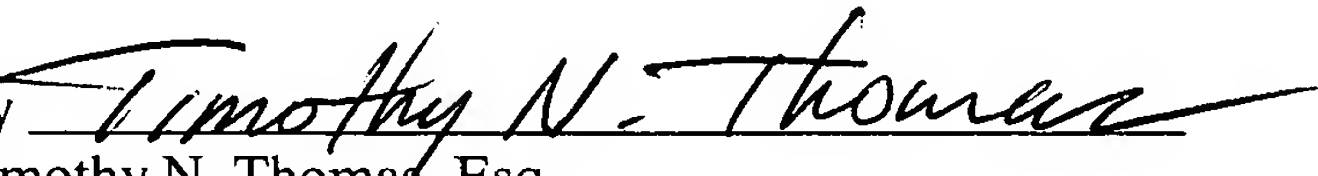
As to the rejections under §102 based on Cragg '527, it is believed that Cragg discloses implanting a biomaterial generally in a disc annulus, where the annulus is used as an envelope to contain the biomaterial. Cragg does not appear to disclose implanting a whole disc annulus in an intervertebral disc nucleus space. While the Office states that Cragg makes such a disclosure at paragraph 174, it is respectfully submitted that the Office's initial reading of Cragg is in error. Reconsideration of the teaching of Cragg '527 is requested.

As to the claims rejected under §103 based on Cragg in view of Froning, to the extent Cragg does not teach or suggest the implantation of a whole disc annulus as indicated above, the stated rejections should be withdrawn.

Turning now to the objection to the specification for incorporating by reference information that the Office believes “has no subject relevant to this application,” it is respectfully submitted that the subject matter desired to be incorporated by reference was proper background information, as stated in the application as filed. More particularly, the material describes alternative uses of collagen-based materials to repair or augment intervertebral discs. Since there is no limitation on the scope of material that can be incorporated by reference into the specification as long as the proper language “incorporate by reference” is used, the incorporation of such background information into the application as filed would appear to have been proper. Reconsideration of the objection to the specification is therefore requested.

In view of the above, it is respectfully submitted that all pending claims are allowable over the prior art of record. Passage of all pending claims to allowance is therefore respectfully requested.

Respectfully submitted,

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